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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/575,429	05/22/2000	Jeffery A. Konecke	1002-111	2363

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EXAMINER

ALEXANDER, LYLE

ART UNIT	PAPER NUMBER
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1743

DATE MAILED: 08/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/575,429

Applicant(s)

KONECKE, JEFFERY A.

Examiner

Lyle A. Alexander

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-8,11,12,16,17 and 19-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-8,11,12,16,17 and 19-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1,3-8,11-12,16-17 and 19-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Galloway et al. (USP 5,403,551).

Galloway et al. teach a device(10) for the collection and testing of a body fluid. The device(10) comprises a container(12) having an opening(14) and a chamber(18) within the container(12). The container is formed or molded from any suitable material such as plastic. Inside wall(30) of the container is flat and recessed while the top of the container is uniformly circular which is read on the claimed "container use to collect ... being uniform circular cross section except for a recessed flat front wall".

Chromatographic means(40) comprises test strip(46) that detect illicit drugs (see col. 4 lines 30-35) and has been read on the claimed "cassette". Column 4 lines 64-66 teach the cover(48) is transparent . Cap(28) has been read on the claimed "lid". When the lid is closed and cover(48) is in place, the means(40) is "inside" and vertically below cap(28).

Galloway et al. is silent to the container made of a transparent material and the claimed sloping bottom floor of 1-3 degrees.

The court decided In re Leshin (125 USPQ 416) that selection of a plastic based upon its suitability of intended use is obvious.

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It is desirable to make specimen containers transparent so the patient can easily see the amount of fluid being added to avoid overfilling/spilling of the container. Also, transparent containers are advantageous for the technician who can identify the type of specimen a glance.

It would have been within the skill of the art to modify Galloway et al. and use a transparent container to gain the above advantages and as selection of a material based upon its suitability of intended use.

The court decided In re Boesch (205 USPQ 215) that optimization of a result effective variable is ordinarily within the skill of the art. A result effective variable has predictable and well-known results.

The degree of slop of the floor would have been a result effective variable to achieve the expected and well-known results speed of fluid travel and fluid pool depth created by the slope.

It would have been within the skill of the art to modify Galloway et al. and slope the floor to any angle, such as 1-3', to achieve the well known and expected results of fluid flow management described above.

Claims 27 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Galloway et al. in view of Davis (USP 5,119,830)[cited on the 2/26/02 PTOL-892].

See Galloway et al. supra.

Galloway et al. are silent to the claimed 1-3' slope of the floor.

Davis teaches in column 3 lines 40+ the floor is inclined and in column 5 line 28+ the sloping of the floor is advantageous to manage the flow of the fluid sample.

The court decided In re Boesch (205 USPQ 215) that optimization of a result effective variable is ordinarily within the skill of the art. A result effective variable has predictable and well-known results.

The degree of slop of the floor would have been a result effective variable to achieve the expected and well-known results speed of fluid travel and fluid pool depth created by the slope.

It would have been within the skill of the art to modify Galloway et al. in view of Davis and slope the floor to any angle, such as 1-3', to achieve the well known and expected results of fluid flow management described above.

### ***Response to Arguments***

Applicant's arguments filed 6/21/06 have been fully considered but they are not persuasive.

Applicant state Galloway et al. is more complex than the instant invention and does not suggest the instant simple and straightforward invention. Galloway et al. teach all of the claimed elements and the instant claim language is open (e.g. comprising) and does not exclude addition features taught by Galloway et al.

Applicant states the instant invention specifies the cassette is received inside of the chamber which is not taught by Galloway et al. The Office does not agree. Galloway et al. teach the chamber(18) that is in fluid communication with the cassette and has been properly read on the instant claim language.

Applicant states the instant invention permits only one orientation for the cassette's insertion into the chamber. These remarks are not commensurate in scope with the pending claims because no such limitations are claimed.

Applicant states new claim 27 and claim 17 should define over Galloway et al. because of the claimed slope angle. The Office maintains these issues are addressed in the 35 USC 103 rejections above.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A. Alexander whose telephone number is 571-272-1254. The examiner can normally be reached on Monday, Wednesday and Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Lyle A Alexander  
Primary Examiner  
Art Unit 1743

